Mr. C. V. Iyyu *(Kunnamkulam):* As far as the tolls are concerned, it is obligatory on the part of the Government to hand over the tolls to the Municipalities. According to this Act, that section alone may be amended and it may be left to the option of the Government or not.

Mr. C. A. Kunjunni Raja *(Advocate-General):* What about elections?

Mr. C. V. Iyyu *(Kunnamkulam):* Even those things are there.

Dr. A. R. Menon *(Minister for Rural Development):* Why should I not give another chance to this Council to go through this measure and decide what alterations they should make or to decide whether they want it or not? I am giving another chance for the House to go through the whole thing, to consider the whole aspects and if they think that the Panchayats have advanced to such an extent--after going through a number of administration reports I understand there is no country or State in India which has attained the same development in the Panchayat field as our own State—then let them do whatever they please. For these reasons I thought we would do well to bring a separate Bill before the House for discussion. That is all.

Mr. C. A. Kunjunni Raja *(Advocate-General):* There are several other difficulties too. Under section 373 of the Municipal Act, for each area separate notifications have to be made, and they have to fix the constitution, powers and the applicability of the various sections of the Act. All this can be avoided if you have got a separate compact Act. In that case it will be very easy to enforce it and you have to look into only that Act.

Mr. C. V. Iyyu *(Kunnamkulam):* After all, these applications and notifications have to be put in paper and print.

Deputy President: Order, order. You cannot carry on a debate like that.

Mr. T. K. Nayar *(Pazhayannur):* May I just make a request, Sir, that is, just to adjourn this Bill till tomorrow for consideration.

Deputy President: If the House is agreeable, the Bill will be taken up tomorrow for further discussion. I hope the House will agree to that.

The House agreed.

The Cochin Insolvency Act Amendment Bill

Deputy President: The Advocate-General will now introduce the Cochin Insolvency Act Amendment Bill.

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Mr. C. A. Kunjunni Raja *(Advocate-General):* Sir, I move that the Cochin Insolvency Act Amendment Bill be read in Council.

Mr. K. P. Kannan Nayar *(Secretary to Government):* I second it.

Mr. C. A. Kunjunni Raja *(Advocate-General):* At the time when the Agriculturists' Debt Relief Bill was introduced in this Council, there was a suggestion that some relief should be given to the insolvents so that they may have some property set apart for their future maintenance in the course of the administration of the estate. Government then undertook to introduce some legislation. Since this law has to be on a par with the corresponding law in British India this Bill had to be delayed a little and this has been now introduced in pursuance of the undertaking then given by Government. The Bill provides that after a dividend of 8 annas in the rupee has been declared one-fourth of the remaining property not exceeding a sum of Rs. 2,500 will be set apart to the insolvent. That is the provision. The substantial provision is in clause 2. There it is said—"In cases where a sum of 8 annas in the rupee has been paid as dividend to the creditors, the court may, where the court is satisfied that the conduct of the insolvent has been *bona fide* and that he has placed all his assets at the disposal of the court, grant him an amount equal to one-fourth of the value of the remaining property of the insolvent not exceeding a sum of Rs. 2,500 in any case." And then there is an explanation.—"In calculating the one-fourth to be granted to the insolvent his surplus assets, if any, outside Cochin, shall be taken into account."

The other clauses are only verbal. This is the material part of the Bill. I request that the Bill may be accepted by the House.

Mr. L. M. Pylee *(Latin Christians-Ernakulam):* On a point of information, Sir, it is said here that "where the court is satisfied and that he has placed all his assets at the disposal of the court..", are not these things ascertained even before the assets are distributed by the court?

Mr. C. A. Kunjunni Raja *(Advovate-General):* No. There is no such provision for the distribution of the assets as suggested. Under the existing Insolvency law, section 66 (2), the insolvent can be given some maintenance during the course of the administration of the estate. This present proposal is a provision which you will not find anywhere in any Insolvency Act. This is a new departure.

Mr. L. M. Pylee *(Latin Christians-Ernakulam):* That is not my point. Are not these things ascertained before dividend is declared?

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Mr. C. A. Kunjunni Raja *(Advocate-General):* I said no dividend is to be given to creditors and it has nothing to do with the *bona fides* of the debtor. The *bona fides* of the insolvent will arise only at the time of his discharge.

Mr. T. V. Subramania Ayyar *(Nemmara):* Mr. President, Sir, I am not aware of the existence of any such provision either in the British Indian Provincial Insolvency Act or in any other enactment which has come to my notice in any other Indian State also. If it is a sign of the mentality of the Government of its anxiety to provide for one and all in the State, I do congratulate them. But I fail to understand how so much of solicitude has been manifested by the Government for the betterment of a person who by taking credits from several persons has contributed for their ruin and in many cases to his own enrichment.

Mr. C. A. Kunjunni Raja *(Advocate-General):* We cannot say that. The insolvency is brought about by various reasons.

Mr. T. V. Subramania Ayyar *(Nemmara):* Of course, the term "*bona fide*" which occurs in this section will not cover all cases in which a debtor without coming into the clutches of the law very often escapes with a good mark for him, even in those cases where his conduct has never been straight. It is invariably the case that the courts at the time of the discharge make an enquiry and if by the time all the creditors have not been tired out in opposing the application, a sort of summary enquiry is conducted and the debtor clears off from the court with a smile on his face to the great detriment of those unfortunate persons who have advanced him money. In cases where 8 annas in the rupee has been paid as dividend to the creditors, the court may, where the court is satisfied that the conduct of the insolvent had been *bona fide* may make provision of a sum not exceeding Rs. 2,500 for his maintenance. That is the provision which is sought to be introduced. Under section 41 or 42 of the Provincial Insolvency Act—there may be a slight change here in the Cochin Act—the necessary percentage of dividend which is absolutely necessary is not given therein. There are cases or there have been cases in which an absolute discharge had been given in cases where even an anna or even less has been given to the creditors. Such cases generally occur. And in cases where the amount of dividend declared is less than 6 annas, the debtor has to prove that he was not responsible for his inability to pay a greater percentage in the nature of dividend.

Mr. C. A. Kunjunni Raja *(Advocate-General):* That is the law here also.

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Mr. T. V. Subramania Ayyar *(Nemmara):* And he has further to prove that owing to circumstances beyond his control he was not able to pay a higher dividend. Without being a creditors' man I fail to see the necessity for this amendment, and I wish to oppose this amendment which is sought to be made in the Insolvency Act. It may be argued that the declaration of dividend of 8 annas in the rupee will be a very rare case and that instances of that kind are rare and therefore it may not be necessary at all to bring into operation this provision. In such cases my answer will be there is no necessity for the legislation. And as the Advocate-General just now observed, during the course of the administration of the estate there is power vested in the Insolvency Court to give him maintenance and when once discharge is granted all odium is removed from him and in a case where absolute discharge is granted accompanied by a certificate of good conduct, there is no necessity to rob Peter to pay Paul and to provide for him a certain amount out of his assets while there are creditors who have not been paid in full and instances may often occur in which many of those creditors happen to be very poor and depending entirely on the amounts which they had invested with the debtor who subsequently became insolvent. So in such cases the provision that he must be provided for to the detriment of all the creditors who are left adrift in the streets in cases where 8 annas dividend is declared is, I say, not equitable and will be to the detriment of the creditors and will be putting a premium on debtors who become insolvents. And there are cases in which when the dividend given happens to be 8 annas certain creditors of this debtor may themselves become insolvents in which case it may be argued that they will get this benefit also. It will be introducing a confusion in the existing Insolvency law by making such a provision and it is totally uncalled for. I fail to understand the reason and I have not been able to read the mind of the Government in introducing this measure. I can understand that the law of insolvency should be uniform throughout British India and if any measure had been on the statute book of British India that should be enacted here also.

Mr. K. M. Ibrahim *(Cranganur) :* We are far advanced. Once before we said that.

Mr. T. V. Subramania Ayyar *(Nemmara) :* I have been under the impression that with regard to several of the enactments in the legislative field, British India had always stood ahead of Cochin. For example, the *Civil procedure Code* of 1882 which was amended there in 1908 was amended here only two or three years back. There are several instances, if I may say so, there are enactments in Cochin State which simply say "*mutatis mutandis*"

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of British India. The very laws in Cochin in several instances owe their existence to the existence of such laws in British India.

Mr. C. A. Kunjunni Raja *(Advocate-General)*: We have got the Tenancy Act of 1090. In that Act we are far advanced.

Mr. T. V. Subramahia Ayyar *(Nemmara)*: I can understand the Advocate-General canvassing an argument that the previous Bill introduced by the Diwan Peishkar is a very good measure ahead of British India. But we are not on that point now. What I wish to say is if the object of the Government as interpreted by some friends on the other side is to show that they are ahead of British India, I submit that it need not be by such a measure, a measure favouring a debtor who is the cause of the ruin of many creditors, but it may be by showing enterprise in advanced legislation either in social or economic fields. At least they can keep abreast of British India with regard to the Tenancy legislation and also certain other enactments, for example, the Agriculturists' Relief Act. While they have not been able to keep abreast with regard to the Debt Conciliation Act or the Usurious Loans Act or the Agriculturists' Relief Act, the claim that they are ahead of British India with regard to certain matters is very strange and I am surprised that the Hon'ble Member for Cranganur from whom I expected a more progressive view coming forward and congratulating the Government with such a statement.

Mr. K. M. Ibrahim *(Cranganur)*: You are coming to perpetuate the monopoly of creditors. *(Laughter)*.

Mr. T. V. Subramania Ayyar *(Nemmara)*: In cases where 16 annas in the rupee has been given without interest to the creditor, I have no objection to make a provision for the debtor.

Mr. A. V. Moothedan *(Chalakkudi)*: Then where is the necessity for this Bill?

Mr. T. V. Subramania Ayyar *(Nemmara)*: I am in favour of the insolvents to this extent. They cannot be eating and living happily in their houses with Rs. 2,500 in a poor State like Cochin while his own creditors who have earned their money by the sweat of their brows and deposited their money with him are not provided for.

Mr. K. R. Viswambharan *(Ezhuvas-Talappalli)*: The very same principle we applied as in the case of the Debt Relief Bill here. You were silent at that time.

Mr. T. V. Subramania Ayyar *(Nemmara)*: I was attempting to answer the interruptions. But if they grow too much, I think

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it will not be possible for me to answer all of them at a time. I am not afraid of the arguments that would be advanced. But I am afraid to take up the useful time of this House. So, on this equitable ground that it is unfair on the part of the Government to favour the debtor to the detriment of the creditor, I submit that such an amendment is uncalled for and I oppose this amendment and oppose the motion made by the Advocate General.

Mr. A. V. Moothedan *(Chalakkudi):* Sir, I support the main principle underlying the Bill. The Insolvency law is an humanitarian measure; in ancient times such a law did not exist. According to Mossaic law, I think a person if he does not pay his debts, he will be stoned. In mediaeval times also that was the custom. Bankruptcy laws or similar laws have changed the rigour of the ancient law. Every civilized Government has enacted Insolvency laws or similar laws just to help those who are unable to pay their debts because of misfortune. But as the law now stands, no insolvent is given anything for his maintenance. When a person is discharged under the Insolvency Act, his person is released. But after that, how can he make his living? The Insolvency court does not allow any property to be retained by the debtor after his discharge for his maintenance. So these discharged insolvents will be beggars. Beggars' nuisance is a great nuisance and do you want to add to their number? I think nobody who has got a sense of humanity will oppose this measure. That is with regard to the general principle.

But with regard to the form of the Bill I am totally dissatisfied. If a person is able to pay 8 as. in the rupee, he is entitled to get relief. In the past 3 or 4 years—I have ascertained from the official receiver—there has been not a single case where a dividend of 8 as. in the rupee has been declared. The difficulty is in the case of secured creditors; they would not come before the Insolvency court and place their assets at the disposal of that court. Then what is the right that court can sell—the equity of redemption. After the economic depression has set in, in most of these cases, assets of the insolvent will be negligible—therefore what I say is that there will be no estates which will be able to pay eight annas in the rupee. If that is so, should Mr. Subramania Ayyar oppose this measure? It is simple and harmless. By accepting this motion, the House would concede a great hunanitarian's principle that the insolvents should be given something for their maintenance. That will be an advancement in the law of insolvency. And I think they are going to refer it to a Select Committee. There we shall try to make amendments and if those amendments are not acceptable, I would oppose. Therefore on the general principle, I support the Bill.

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Mr. K. Kochukunhan Kaimal *(Vadakkancheri):* Do you want that the dividend should be reduced from 8 as. ?

Mr. K. R. Viswambharan *(Ezhuvas-Talappalli):* Under S. O. 61, I beg to leave the House to present a petition dated 19th Vrischigam signed by 927 persons of various villages of the Trichur and the Mukundapuram Taluks, containing a request that when the Bill which is sought to be introduced in this Council is taken up for discussion provision should also be made for declaring a dividend on secured debts also. As the Bill stands at present, the dividend of 8 as. is excluding the secured debts and only including unsecured debts. So that is the purport of the petition. I beg leave of the House to accept this petition.

Mr. T. V. Subramania Ayyar *(Nemmara):* The position seems to be that every Bill brought by the Government satisfies either the debtor or the creditor.

Deputy President: The relevant rule, in the case of such petitions is this: "If the petition is in conformity with Standing Order 60, the Secretary shall, if so required by the President, read it to the Council or shall make an abstract of it and read the abstract to the Council. The President shall not allow any debate or any member to speak upon or in relation to such petitions." So that if hon'ble members want the petition to be read here, the Secretary will have to read it.

(Several voices: It is only a small petition. We shall read the whole.)

Deputy President: The Secretary will read the petition.

Secretary to the Council: Before the Cochin Legislative Council.

"Agriculturists residing in the Villages, Chalakkudi, Ollur, Alur, Pariyaram, Elanjipra, Puthur, Manalur, Karamukku, Avanisseri, Padavarattu, Marathakkara, Edakkunni, Alathur, Kuruvilasseri, Alathur and Nadathara—*Petitioners.*

Petitioners beg to submit as follows.—

1. They are all agriculturists and loyal subjects of His Gracious Highness the Maharaja. Due to the economic depression, they have become heavily involved in debts and are unable to pay their debts in full.

2. The petitioners are glad that the Government have introduced a Bill to mend the Cochin Insolvency Act; but regret to state the provisions of the Bill would not really help any of the petitioners. As the Bill now stands, if an insolvent is unable to pay eight annas in the rupee, to his unsecured creditors, he will be given some property for his maintenance. Such debtors among agriculturists are very rare. If after taking into consideration the whole of the properties of the insolvent there is sufficient assets to pay to his secured and unsecured creditors eight annas in the rupee, then the insolvent should be given some property for his maintenance. There should be some provision to give effect to this suggestion.

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3. If the Government are not prepared to amend the Insolvency Act to give effect to the suggestions contained in paragraph (2) above, the petitioners pray that the Government may be pleased to accept the suggestions contained in the Agriculturists' Relief Bill introduced by Mr. A. V. Moothedan last year or the Agriculturists' Relief Act Amendment Bill going to be introduced by him.

In the circumstances, the petitioners pray that the Hon'ble Council may be pleased to incorporate suitable amendments in the Insolvency Act giving effect to the suggestions contained in paragraphs (2) and (3) above."

The House rose for the day at 5 p.m.

APPENDIX I

THE COCHIN COURT FEES (AMENDMENT) BILL

Preamble.—Whereas it is expedient to prescribe the mode of valuing certain suits for the purpose of determining the jurisdiction of Courts with respect thereto; And Whereas it is deemed necessary to further amend the Cochin Court Fees Act, II of 1080 for this purpose; It is hereby enacted as follows.—

1. (1) *Short title and commencement.*—This Act may be called the Cochin Court Fees (Amendment) Act, of 111 .

(2) It shall come into force at once.

2. *Insertion of a new chapter IV A.*—Insert the following as Chapter IV A in the Cochin Court Fees Act, II of 1080.—

"CHAPTER IV A

Suits relating to Land

28 A. (1) *Power to Government to make rules determining value of land for purposes of jurisdiction.*—The Government may make rules for determining the value of lands for purposes of jurisdiction in the suits mentioned in section 4, paragraphs V and VI and paragraph X, clause (*e*).

(2) The rules may determine the value of any class of land, or of any interest in land, in the whole or any part of a local area and may prescribe different values for different places within the same local area.

28 B. *Valuation of relief in certain suits relating to land not to exceed the value of the land.*—Where a suit mentioned in section 4, paragraph IV, or article 7 of Schedule II, relates to land or an interest in land of which the value has been determined by rules under the last foregoing section, the amount at which for purposes of jurisdiction the relief sought in the suit is valued shall not exceed the value of the land or interest as determined by those rules.

28 C. (1) *Making and enforcement of rules.*—Government shall, before making rules under section 28 A, consult the High Court with respect thereto.

(2) Rules under section 28 A shall not take effect till the expiration of one month after they have been published in the Cochin Government Gazette.

28 D. *Repeal of section 15 of the Cochin Civil Courts Act.*—On and from the date on which rules under section 28 A take effect, section 15 of the Cochin Civil Courts Act, III of 1076, shall stand repealed.

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